



GW45

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## SUBSTANTIVE POLICY STATEMENT

*This substantive policy statement is advisory only. A substantive policy statement does not include procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedures act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties, you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.*

### **PROCEDURES FOR ESTABLISHING NEW SERVICE AREA RIGHTS WITHIN ACTIVE MANAGEMENT AREAS**

#### **I. BACKGROUND**

The Groundwater Code provides that in an active management area, a city, town or private water company has the right to withdraw and transport groundwater within its service area for the benefit of landowners and residents within its service area, and the landowners and residents are entitled to use the groundwater, subject to the statutory provisions relating to groundwater transportation and conservation requirements established in management plans. A.R.S. § 45-492(A). The right of a city, town or private water company to withdraw and deliver groundwater within its service area is referred to as a service area right. “Service area” is defined in the Groundwater Code as the area of land actually being served water for non-irrigation use by a city, town or private water company plus additions to such area which contain an operating distribution system owned by the city, town or private water company primarily for the delivery of water for a non-irrigation use. A.R.S. § 45-402(31).

Occasionally, a city, town or private water company desires to establish a new service area, either as its only service area or as an additional service area distinct from its existing service area (“satellite service area”). Because the Groundwater Code does not specify what must be done to establish a new or satellite service area, the Arizona Department of Water Resources

("Department") issued a substantive policy statement on March 17, 2005, setting forth procedures for establishing new service area rights (GW 40).

Under the procedures set forth in GW 40, an entity may obtain a new service area right if it applies to the Department for a service area right and satisfies certain criteria. Among other things, the entity must first serve water for non-irrigation use to a minimum number of customers/connections pursuant to one or more of the water rights/permits listed in the substantive policy statement. The purpose of this requirement is to ensure that only entities that are bona fide water providers will receive a service area right. Entities that are not bona fide water providers and that wish to withdraw groundwater from a non-exempt well for their own use and/or for use by a related entity should obtain a non-irrigation grandfathered groundwater right or, if eligible, a groundwater withdrawal permit.

GW 40 provides that a city, town, private water company or district established under A.R.S. Title 48 and authorized by law to serve groundwater for non-irrigation use (district) may obtain a service area right by serving water to only one customer/connection if one of the following applies: (1) the entity has an active designation of assured water supply (AWS) or a pending application for a designation of AWS; or (2) the development to be served by the entity is a development for which a certificate of AWS is active or pending. In addition, if the entity is a private water company, the customer/connection must be located within the private water company's Certificate of Convenience and Necessity as approved by the Arizona Corporation Commission. If the entity is a district, the customer must be located within the district's established boundaries. If the entity is a city or town, the customer must be located within the city's or town's water planning area. If a city, town, private water company or district does not meet these requirements, it must serve water to four customers/connections for at least 90 days.

## **II. REVISED PROCEDURES FOR ESTABLISHING NEW SERVICE AREA RIGHTS**

The Department has reviewed the substantive policy statement and has determined that it should be revised to allow a city, town, private water company regulated by the ACC or district to obtain a service area right by serving only one customer/connection regardless of whether the city, town, private water company or district has an active AWS designation or a pending application for a designation and regardless of whether the customer/connection is part of a development for which a certificate of AWS is active or pending. The Department believes that if a city, town, private water company or district meets all the other requirements in the substantive policy statement, including the requirement regarding location of service, it will be a bona fide water provider and should receive a service area right if it serves only one customer.

The Department has determined that the substantive policy statement should also be revised to: (1) remove the references to the time-period in which the Department will make a

determination on a Final Petition to Establish a New Service Area Right and add a reference to the Department's licensing time-frame rule; and (2) remove the outdated references to the Department staff to whom any questions or comments should be directed.

The attached document, entitled "Procedure for Establishment of a New Service Area Right," Substantive Policy Statement GW 45, contains the revised service area establishment procedures. The attached document is hereby adopted as a substantive policy statement of the Department, superseding and replacing Substantive Policy Statement GW 40.

**EFFECTIVE DATE**

This substantive policy statement shall become effective immediately. The Director of the Department may modify or revoke this policy at any time.

Dated this 17 day of August, 2021.

A handwritten signature in dark ink, appearing to read "Thomas Buschatzke", is written over a horizontal line.

Thomas Buschatzke

Director

Arizona Department of Water Resources

**ARIZONA DEPARTMENT OF WATER RESOURCES**  
**PROCEDURES FOR ESTABLISHMENT OF A NEW SERVICE AREA RIGHT**

The following procedures must be followed in order to obtain a new service area right:

- 1) An Initial Notice of Intent to Establish a New Service area (NOI) must be filed on the form provided by the Department. The NOI must be submitted with the following:
  - a. A preliminary service area map showing the proposed water distribution system (which may include existing or proposed wells, water lines, storage facilities, etc.).
  - b. A development plan which describes how water will be utilized at the site (both short term and long term uses) and how the land will be developed.
- 2) The applicant must establish the service area right by initially serving water pursuant to one or more of the following water rights/permits: groundwater used pursuant to Type 2 Non-Irrigation Grandfathered Right(s) or Type 1 Non-Irrigation Grandfathered Right(s); stored water recovered pursuant to recovery well permit(s); surface water used pursuant to a statement of claim, a court decree, a permit to appropriate public water or a CAP contract; or effluent delivered directly from a treatment plant. Copies of all water rights or permits must be submitted with the NOI.
- 3) A well impact analysis pursuant to the Department's Well Spacing and Well Impact Rules will be required for any proposed "new well" (as defined in A.R.S. § 45-591) unless the well qualifies as a replacement well in approximately the same location. A well impact analysis may also be required for an existing well that will be used as a recovery well. The analysis must demonstrate that the well's maximum projected pumping volume will not unreasonably impact surrounding land or other water users and that the well meets all other requirements in A.R.S. §§ 45-591 through 604.
- 4) The applicant must establish service to at least one customer/connection with water pursuant to one or more of the water rights/ permits listed in paragraph 2 below if the applicant is one of the following entities:
  - a. City.
  - b. Town.
  - c. Private Water Company regulated by the Arizona Corporation Commission (ACC).
  - d. District established pursuant to A.R.S. Title 48 and authorized by law to serve groundwater for non-irrigation use.

The customer/connection can come from residential or non-residential uses as more fully described in paragraph 8 below. If the applicant is a private water company, all proposed uses must be located within the established boundaries of the applicant's Certificate of Convenience and Necessity (CCN) as approved by the ACC. If the applicant is a district formed under Title 48, all proposed uses must be located within the established boundaries of the district. If the applicant is a city or town, all proposed uses must be located within the city or town's water planning area. All uses must be within the Active Management Area (AMA) boundaries for which the service area right is being established.

- 5) If an applicant does not qualify under paragraph 4, the applicant must establish the service area right by serving water to at least four customers/connections pursuant to one or more of the water rights/permits listed in paragraph 2 above. At least one of the four customers/connections must be served for at least 90 days. The four customers/connections can come from a combination of residential and non-residential uses as more fully described in paragraph 8 below. All uses must be within the AMA boundaries for which the service area right is being established.
- 6) A status update letter must be submitted every 6 months from the date the NOI is filed if the applicant is not yet serving the required number of customers/connections. This status update letter must describe the current status of the service area establishment, progress that has been made, and include proof that the provider still has the necessary legal authority to use water pursuant to the water rights/permits listed on the NOI or demonstrate that one or more other water rights/permits listed in paragraph 2 above have been acquired in an amount sufficient to establish the service area.
- 7) In order to establish a service area right, water must be delivered to customers other than to the water provider applying to establish a new service area right. In other words, the water provider applying for the service area right cannot serve itself and count that service as a customer/connection, except in the case of model homes as described in paragraph 8(b) below.
- 8) Customers/connections may include, but are not limited to, the following:
  - a. Construction water associated with a development included in the development plan submitted with the NOI may be counted as one customer/connection. Construction water must be used on-site at the same location for which the new service area is being established. Typical construction uses may include water used for site preparation, grading, home

- construction, amenity construction, or dust control. Construction water will count as one customer/connection, even if more than one contractor with more than one meter each uses water for construction purposes.
- b. Each model home will count as one customer/connection. Each model home must be located on a separate parcel with a separate water meter installed. Common ownership is allowed as long as the homes will eventually be sold to different owners.
  - c. A golf course facility (including the golf course, driving range, country club, maintenance facility, restaurant, etc.) will count as one customer/ connection.
  - d. A commercial or industrial use will count as one customer/connection per commercial/industrial owner.

This is not a comprehensive list of acceptable customers to be used for service area establishment. If an applicant has other potential customers, the Department strongly encourages the applicant to discuss the acceptability of these alternative customers with Department staff prior to filing the NOI with the Department.

- 9) The allotments of the rights or permits used to establish the service area right cannot be exceeded. Additional rights or permits must be obtained if it reasonably appears that the rights or permits will be inadequate to serve the needs of the development prior to classification as a service area.
- 10) All water withdrawn must be measured using a measuring device and measuring method approved by the Department. See Arizona Administrative Code R12-15-901, 903.
- 11) After service has been established by a city, a town, a private water company regulated by the ACC, or a district established pursuant to A.R.S. Title 48 as delineated in paragraph 4, the applicant must submit the Final Petition to Establish a New Service Area Right (Final Petition). The applicant must identify the types of customer/connection it served and estimate the amounts of water delivered to the customer/connection to establish the new service area right.
- 12) After an applicant other than those described in paragraph 4 has established service, the applicant must submit in writing, notice that service has commenced. Once the four required customers/connections have been established and served for the required period of time, the Final Petition to Establish a New Service Area Right (Final Petition) must be submitted. The applicant must identify the types of customers/connections it served and the amount of water (with meter readings) delivered to customers/connections to establish the new service area right.

- 13) A site visit may be conducted to inspect the pending new service area after the Final Petition is submitted and before a Service Area Right is granted.
- 14) Although the Department of Water Resources may grant a Service Area Right, other state agencies such as the Arizona Corporation Commission and the Department of Environmental Quality may also have regulations and policies that affect the applicant.
- 15) The Department will process a Final Petition within the applicable licensing timeframes set forth in A.A.C. R12-15-401, Table A.